

to ACCLP's 1985 and 1986 tax returns, there were no distributions to Astroline Company (or any other limited partner) in those years. SBH Exh. 26, p. 4; SBH Exh. 27, p. 2. According to ACCLP's 1987 tax return, there were a total of just under \$5 million in distributions in 1987, SBH Exh. 28, p. 4.

84. Therefore, as of December 31, 1985, the "Unrecovered Adjusted Capital" for the limited partners was \$9.8 million (i.e., capital contributions of \$9.8 million less zero distributions) plus a return amounting, in effect, to interest. Since the proceeds of any sale of the station would have been applied first to paying off such Unrecovered Adjusted Capital, SBH Exh. 9, pp. 31-32, as of December 31, 1985, had ACCLP sold Station WHCT-TV for less than approximately \$11 million (i.e., the \$9.8 million plus a conservative return of approximately 10%), all of those proceeds would have been distributed to the limited partners, and Ramirez would have received nothing. ^{27/}

^{26/} (...continued)

internal statements never showed the \$4,000,000 debt. SBH Exh. 30, p. 23.

^{27/} During cross-examination, Ramirez claimed that the amount due to limited partners on the sale of the station would have been affected by various unspecified tax benefits which those partners might have derived from ACCLP's on-going losses. Tr. 322-23; 383. But that testimony is at odds with the specific language of the December 31, 1985 Amended Partnership Agreement, which defines "Unrecovered Adjusted Capital" without any reference at all to tax benefits or the like. SBH Exh. 9, p. 7. As noted above, the only downward adjustment to the limited partners' capital contributions provided for in the definition of "Unrecovered Adjusted Capital" was for distributions -- and the documentary record proffered by Ramirez (and Hoffman and TIBS) establishes clearly that there were no such distributions in 1985 or 1986, and only a relatively minor distribution in 1987 which served to offset corresponding loans to ACCLP by the limited

(continued...)

85. Similarly, as of December 31, 1986, the "Unrecovered Adjusted Capital" for the limited partners was \$18.3 million (i.e., aggregate capital contributions of \$18.3 million less zero distributions) plus a return. Thus, as of December 31, 1986, had ACCLP sold Station WHCT-TV for less than approximately \$20 million (i.e., the \$18.3 million plus a conservative return of approximately 10%), all of those proceeds would have been distributed to the limited partners, and Ramirez would still have received nothing.

86. By spring, 1987, the limited partners had invested \$22 million in equity, Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 101. ACCLP's 1987 income tax return reflects that slightly less than \$5 million was paid in distributions at some time that

^{27/} (...continued)
partners.

This is not to say that the ACCLP limited partners did not derive some tax advantages from the allocation of profits and losses during the period 1985-1987 -- it is entirely possible, if not likely, that such advantages were enjoyed by the limited partners, and served as a partial inducement for them to continue to fund ACCLP's operations. However, the plain language of the December 31, 1985 Amended Partnership Agreement establishes beyond any doubt that any such tax advantages would not be included in the calculation of the distribution of any proceeds from the sale of the station. Rather, before Ramirez would receive dime one from any such sale, the limited partners would have to be re-paid all the funds they had paid in from 1985 on, to the extent that those funds had not already been re-paid through any actual cash distributions. Again, the record demonstrates that there had been no cash distributions at all in 1985 and 1986, during which period the limited partners' collective contributions climbed to nearly \$20 million. And the slightly less than \$5 million distribution in 1987 merely offset the "loan" for \$5 million made to ACCLP by limited partners that same year. Under the distribution formula, repayment of that loan would appear to have been entitled to an even higher priority than the repayment of "Unrecovered Adjusted Capital". See SBH Exh. 9, pp. 31-32.

year. If those distributions were made during or prior to the spring, the "Unrecovered Adjusted Capital" for the limited partners would have been approximately \$18-19 million (i.e., capital contributions of \$22 million less approximately \$5 million in distributions plus a conservative return of approximately 10%). But in addition, the limited partners were owed \$5 million on their demand notes, which would have been payable (as a partnership liability required to be discharged) even before any repayment of Unrecovered Adjusted Capital could occur. SBH Exh. 9, p. 31. Thus, had ACCLP sold Station WHCT-TV for less than approximately \$23 million (i.e., the \$22 million in equity contributions, less \$5 million in distributions, plus a conservative return of approximately 10%, plus the \$5 million necessary to re-pay loans from the limited partners), all of those proceeds would have been distributed to the limited partners, and Ramirez would still have received nothing.

87. In November, 1984, ACCLP was provided with an appraisal putting the value of Station WHCT-TV at "at least \$7.0 million". SBH Exh. 137. The limited partners' Unrecovered Adjusted Capital through 1985 (i.e., approximately \$11 million) substantially exceeded that appraised value.

88. In March, 1986, ACCLP was provided with a second appraisal putting the value of the station at "between \$10 and \$12 million." SBH Exh. 138. The limited partners' Unrecovered Adjusted Capital through 1985 (i.e., approximately \$11 million) was essentially equal to that appraised value; however, the Unrecovered Adjusted Capital through 1986 (i.e., approximately

\$20 million) was almost double that 1986 appraised value.

89. Ramirez's testimony indicates that the highest offer which ACCLP received for the station came in early 1987, in the amount of approximately \$17-19 million. Hoffman/TIBS/Ramirez Exh. 2, p. 14. ^{28/} However, the limited partners' Unrecovered Adjusted Capital through 1987 (i.e., approximately \$18-19 million), together with the \$5 million in loans from the limited partners which would have had to be repaid, far exceeded the value of that offer.

90. Thus, contrary to Ramirez's claims in his testimony, the evidence indicates that at no time during the history of ACCLP could Ramirez ever reasonably have expected to have received any of the proceeds from the sale of ACCLP's station, much less a 21% share of those proceeds.

91. Under the December 31, 1985 Amended Partnership Agreement, all profits, losses and tax credits were to be allocated 99% to the Limited Partners, 1% to the General Partners until "the Participation Change Point" ("PCP"); after the PCP was reached, the allocation would be based on "Partnership Interest". SBH Exh. 9, p. 27. The definition of the PCP was dependent on the notion of Unrecovered Adjusted Capital: the PCP would be reached only when the Unrecovered Adjusted Capital of all Limited Partners had been reduced to zero. SBH Exh. 9, p. 5.

^{28/} Under cross-examination, Ramirez conceded that that 1987 offer was for the station free and clear of any litigation. Tr. 377-78. Ramirez further conceded that the station was never free and clear of litigation (primarily because of the SBH appeal). Id. The \$17 million offer was not, therefore, an accurate measure of the value of the station as it then stood.

92. But the Unrecovered Adjusted Capital could be reduced only through distributions. SBH Exh. 9, p. 7.^{29/} No distributions were made to anyone in 1985 and 1986, SBH Exh. 26, p. 4; SBH Exh. 27, p. 2. While ACCLP's 1987 tax return reflects distributions of slightly less than \$5 million to limited partners in that year, SBH Exh. 28, p. 4, by that time the limited partners had contributed in excess of \$20 million. Hoffman/TIBS/Ramirez Exh. 8, p. 5 and Exh. 9, p. 5. Thus, ACCLP never came close to reaching the PCP, and under the December 31, 1985 Amended Partnership Agreement Ramirez was entitled, at most, to a 0.75% share -- not a 21% share -- of ACCLP's profits, losses and distributions.

93. There is additional evidence that ACCLP plainly understood that, as a result of the revision of the partnership agreement, Ramirez's ownership interest in ACCLP was substantially less than the 21% which ACCLP continued to claim to the Commission. The Federal income tax returns prepared for ACCLP's partners and submitted to the Internal Revenue Service ("IRS") for 1984 reflected that Ramirez's ownership interest in ACCLP was 21%, SBH Exh. 25, p. 8, while the ownership interest of Astroline Company was shown to be 9%, SBH Exh. 25, p. 10. The Federal income tax returns prepared for ACCLP's partners and submitted to the IRS for 1985 -- i.e., the first year in which

^{29/} See also SBH Exh. 9, p. 9 (Section 3.3 of the December 31, 1985 Amended Partnership Agreement defines "Partnership Capital" as "the aggregate Initial and Additional Capital Contributions of the Partners"; it contains no indication that any partner's "capital" could or would be affected in any way by allocations of profits, losses or tax credits).

the December 31, 1985 Amended Partnership Agreement was effective -- showed that, while Ramirez's "percentage of . . . ownership of capital" had initially been 21%, by the end of that year (i.e., 1985) it had been reduced to 0.75%. SBH Exh. 26, p. 22. The partnership's tax return for 1986 similarly showed that Ramirez's "percentage of . . . ownership of capital" remained at 0.778% through that year. SBH Exh. 27, p. 16. The partnership's tax return for 1987 similarly showed that Ramirez's "percentage of . . . ownership of capital" remained at 0.778% through that year. SBH Exh. 28, p. 8.

94. As Hoffman himself expressly observed, the result of the revisions effected in the December 31, 1985 Amended Partnership Agreement was that

notwithstanding the FCC minority preference guidelines, Ramirez no longer owned 21% of the partnership's equity. . . . Rather than retaining 21% of the equity which he held under the initial partnership agreement, Ramirez was given the right only to receive 21% of all partnership distributions after Astroline Company had been repaid its equity contributions in full, with a return. . . . Ramirez's interest, which had been reflected as 21% on the 1984 ACCLP tax return, was shown to have been reduced to below 1% on the 1985, 1986 and 1987 tax returns.

SBH Exh. 30, pp. 12-13. ^{30/}

95. Ramirez testified that the figures set out in ACCLP's tax returns accurately reflected the level of his own capital contributions to ACCLP relative to those of the other ACCLP

^{30/} See also SBH Exh. 31, p. 11 (Hoffman advises U.S. Court of Appeals for the Second Circuit that "[n]otwithstanding the FCC minority preference guidelines, the amendment [of the ACCLP partnership agreement as of December 31, 1985] resulted in Ramirez no longer owning 21% of the equity in ACCLP").

partners. Tr. 382. ^{31/} Ramirez insisted, however, that his notion of "equity" ownership meant that, upon liquidation of the company, he would be entitled to a 21% share of the net proceeds, irrespective of the 99%/1% allocation and irrespective of the "ownership of capital" information reported on the tax returns. Tr. 383-84. But even Ramirez's own tax accountant, Kent Davenport, disagreed with him on that point. Tr. 440 ("The Ownership of Capital number [in ACCLP's tax returns], that in theory is how the assets would be distributed if the partnership were liquidated at this point in time or during the period in which the K-1 covers"). While Ramirez might like to think that

^{31/} The "percentage of ownership" figure appearing in ACCLP's tax return was based on the 99%/1% allocation of profits and losses adopted by ACCLP in the December 31, 1985 Amended Partnership Agreement. Tr. 384; 440. That allocation, however, does not appear to have been based on any discernible measure of actual ownership, and appears instead to have been an arbitrary allocation designed to maximize the share of profits and losses flowing to the non-minority ACCLP principals. As a result, while the "percentage of ownership" appearing in the ACCLP tax returns may have accurately reflected the level of Ramirez's sharing in profits and losses (i.e., 99% for Astroline Company and other non-employee limited partners, 1% for all general partners), the "percentage of ownership" reported to the IRS plainly over-stated the level of Ramirez's capital contributions, as Ramirez himself acknowledged. Tr. 384 ("I was not contributing any money").

Ramirez's "percentage of ownership" as reported in the tax returns was substantially higher than his proportionate share of ACCLP's capital contributions. Ramirez's actual capital contribution never exceeded \$210, while the capital contributions of Astroline Company amounted to some \$22 million by the spring of 1987, Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 101, meaning that Ramirez's proportionate share was in the range of 0.001% (i.e., one one-thousandth of one percent), far lower than the 0.778% listed for Ramirez in ACCLP's tax returns.

Either way, though, the fact remains that even ACCLP was constrained to acknowledge in its IRS returns that Ramirez's ownership of ACCLP was dramatically lower than the "more than 20%" threshold level required under the Commission's minority ownership policies.

he would have been entitled to some greater share of any proceeds from a liquidation of ACCLP, the fact is that neither the December 31, 1985 Amended Partnership Agreement nor ACCLP's own expert ^{32/} accountant support Ramirez's fanciful notion.

96. As had been the case with the original May 29, 1984 partnership agreement, the December 31, 1985 Amended Partnership Agreement contained no provision for intangible capital contributions such as "sweat equity". See SBH Exh. 9, pp. 3-4.

97. The December 31, 1985 Amended Partnership Agreement prohibited Ramirez from selling or otherwise encumbering his general partnership interest without the consent of all other general partners and a majority of the limited partners. SBH Exh. 9, p. 16. Ramirez similarly could not sell, mortgage or pledge all or substantially all of ACCLP's assets without the prior consent of a majority of the limited partners. SBH Exh. 9, p. 12. The December 31, 1985 Amended Partnership Agreement did not prohibit the limited partners from communicating with the general partners concerning ACCLP's broadcasting activities. Similarly, the December 31, 1985 Amended Partnership Agreement specifically contemplated that limited partners might participate in or even control ACCLP's business, if such limited partners were also general partners. SBH Exh. 9, p. 14. Since one of ACCLP's general partners -- WHCT Management, Inc. -- was owned entirely by one of ACCLP's limited partners -- Astroline

^{32/} At Tr. 384, Ramirez touted Davenport's qualifications: "he's not only an auditor and a tax partner, he's an attorney. He's probably got more degrees than Carter has liver pills related to this stuff. . . ."

Company -- Astroline Company (and its principals) were clearly in a position under the December 31, 1985 Amended Partnership Agreement to control ACCLP.

98. There is no evidence that ACCLP caused a copy of the December 31, 1985 Amended Partnership Agreement to be filed with the Commission at any time. In response to a request for admissions presented by SBH, Ramirez, TIBS and Hoffman acknowledged that none of them had in their possession or were aware of any documents reflecting that ACCLP ever filed a copy of the December 31, 1985 Amended Partnership Agreement, or advised the Commission of the existence of that document. SBH Exh. 22.

99. Moreover, it does not appear that B&H -- ACCLP's communications law firm which bore sole responsibility for assuring the filing of materials by ACCLP with the Commission, Tr. 302 -- even had a copy of the December 31, 1985 Amended Partnership Agreement in its files until late July, 1987, at the earliest, and possibly not even until September, 1988. Notes made by Dale Harburg ("Harburg"), a B&H attorney preparing a draft Ownership Report in July, 1987, suggest that she was unable to find a copy of the December 31, 1985 Amended Partnership Agreement in B&H's files. SBH Exh. 47. ^{33/} More than a year later, on August 31, 1988, Bacon sent Hart yet another copy of

^{33/} By letter dated July 28, 1987, Bacon sent Harburg (in "c/o Thomas A. Hart, Jr.", SBH Exh. 85) a copy of that agreement. Bacon testified that he would have sent this at the request of Harburg or Hart. Tr. 497-98. This further supports a finding that B&H did not have a copy of the December 31, 1985 Amended Partnership Agreement in its files as of July, 1987 -- otherwise, Bacon would have had no reason to send one.

the December 31, 1985 Amended Partnership Agreement. SBH Exh. 92. Had a copy of that agreement been filed with the Commission in 1986 (when it was executed), with a stamped "received" copy retained by B&H pursuant to its routine custom, no need would have existed for sending multiple copies of the agreement years later.

100. Ramirez testified that "there is correspondence demonstrating that [the December 31, 1985 Amended Partnership Agreement] was routinely sent to Mr. Hart for filing with the FCC and sent to the station for filing in the Public Inspection File." Hoffman/TIBS/Ramirez Exh. 2, p. 24. In support of this claim, Ramirez's testimony referred to two documents (included as Attachment I to Hoffman/TIBS/Ramirez Exh. 2). But those two documents do not support Ramirez's claim.

101. The first of the two documents cited by Ramirez is a letter, dated September 2, 1986, from Bacon to Ramirez, transmitting to Ramirez copies of the December 31, 1985 Amended Partnership Agreement. In that letter Bacon advised Ramirez that Bacon "believe[d] one of the copies should be placed in your public record file." Hoffman/TIBS/Ramirez Exh. 2, Attachment 1, p. 1. This does not establish that ACCLP had filed the December 31, 1985 Amended Partnership Agreement with the Commission. To the contrary, it strongly suggests that ACCLP had not filed the agreement with the Commission.

102. The evidence demonstrates that it was B&H, not P&B, which bore responsibility for filing materials with the Commission. E.g., SBH Exhs. 19, 20; Tr. 301-02. Thus, the fact

that Bacon (at P&B), rather than Hart (at B&H), was sending the agreement to Ramirez suggests that the agreement had not travelled through the channels which would normally have caused it to be filed with the Commission. This is especially so in view of Bacon's suggestion that the agreement be placed in the station's public file -- it was normally B&H's responsibility to provide items for the public file, see, e.g., SBH Exhs. 19, 20, Hoffman/TIBS/Ramirez Exh. 6, p. 94; Tr. 302. Again, the fact that Bacon was sending the agreement to Ramirez suggests that that normal operating procedure -- which would have included routine filing with the Commission -- did not occur.

103. The second document cited by Ramirez supports even more conclusively the finding that ACCLP had not filed (and did not file) the December 31, 1985 Amended Partnership Agreement with the Commission. That document is the July 28, 1987 letter from Bacon to Harburg (in care of Hart), transmitting to her, inter alia, a copy of the December 31, 1985 Amended Partnership Agreement. Hoffman/TIBS/Ramirez Exh. 2, Attachment I, p. 2. Presumably this is the document which Ramirez believes shows that the agreement was "routinely sent to Mr. Hart for filing with the FCC". ^{34/} But this document is dated July 28, 1987, approximately a year and a half after the December 31, 1985 Amended Partnership Agreement was executed. There is no evidence

^{34/} The September 2, 1986 letter from Bacon to Ramirez -- the only other document cited by Ramirez to support his general claims about the possibility that ACCLP filed the agreement with the Commission -- does not mention Hart, and there is no evidence that any copy of that letter was sent to Hart. Hoffman/TIBS/Ramirez Exh. 2, Attachment I, p. 1.

that Hart was sent a copy of the agreement for filing with the Commission at any time prior to July, 1987.

104. Further, the evidence demonstrates that, even assuming that Hart (or Harburg) received Bacon's July 28, 1987 letter with the copy of the December 31, 1985 Amended Partnership Agreement, that agreement was not then filed with the Commission. As discussed below at ¶¶141-143, ACCLP was required to file a full Ownership Report on August 3, 1987 (less than a week after the date of Bacon's letter). Such a report required the inclusion, with the report, of a copy of the December 31, 1985 Amended Partnership Agreement. See SBH Exh. 74, p. 3. However, although Harburg had been working on such a report for several weeks, and although Ramirez himself had executed two such reports prior to August 3, no such report was filed with the Commission, and no copy of the agreement was filed by ACCLP at that time. See SBH Exh. 21.

VII. Other ACCLP Ownership Changes -- 1986-1987

105. On March 13, 1986, Webb relinquished her limited partnership interest in ACCLP. SBH Exh. 10.

106. On December 26, 1986, Planell acquired an additional 2% limited partnership interest in ACCLP. SBH Exh. 11.

107. On April 7, 1987, Hart relinquished his general partnership interest in ACCLP. SBH Exhs. 55-57.

VIII. ACCLP's Operating Practices -- 1985-1987

108. Over the period mid-1984 (i.e., from the formation of ACCLP) to late 1988 (when ACCLP went into bankruptcy), ACCLP's

routine operations featured the following characteristics.

109. First and foremost, Ramirez did not, until sometime in 1988 shortly before the ACCLP bankruptcy (which was commenced in October, 1988), possess a checkbook for any ACCLP accounts. Hoffman/TIBS/Ramirez Exh. 3, 188 BR 102. Instead, all ACCLP funds were maintained in an account at the State Street Bank in Boston, where the Astroline Company partners transacted their own business. Hoffman/TIBS/Ramirez Exh. 3, 188 BR 101; see also SBH Exh. 99. While ACCLP did maintain a "lock box account" at the Bank of Boston office in Hartford for the purpose of collecting deposits of operating revenues, the contents of that account were swept twice weekly and automatically transferred to the State Street Bank account in Boston. Id. ^{35/} Signatories on the State Street Bank account included Ramirez, Boling, Sostek and two other non-minority principals of Astroline Company. Hoffman/TIBS/Ramirez Exh. 3, 188 BR 102. Boling and Sostek exercised their check-signing authority on numerous occasions. SBH Exh. 30, p. 21. ^{36/}

^{35/} There is no evidence that ACCLP itself had any business offices, employees or connections to the Boston area -- other, of course, than the fact that that is where Astroline Company happened to have its offices.

^{36/} Hoffman's own descriptions of ACCLP's "cash control system" appear in the record at SBH Exh. 30, pp. 13-22 and SBH Exh. 31, pp. 12-20. As Hoffman advised the U.S. Court of Appeals for the Second Circuit,

Ramirez testified [in the bankruptcy proceeding] that ACCLP could not obtain a check form Astroline Company's office in Massachusetts without submitting the proper documentation; as Ramirez put it, ACCLP 'had to dot all the I's and cross the T's' in order to get a check. . . . Astroline Company demanded that this procedure be
(continued...)

110. In order to pay the station's bills, Ramirez had to compile the various invoices into "transmittals" which were then routinely shipped to the office of Astroline Company in the Boston area. E.g., SBH Exh. 30, pp. 14-18; see also SBH Exh. 104. There the materials sent from Hartford would be reviewed, and checks on ACCLP's account would be prepared; while most such checks would be returned to Ramirez for signature, Astroline Company partners themselves signed ACCLP checks as well, and on at least two occasions in 1985, Astroline Company partners wrote ACCLP checks to Astroline Company with no involvement at all by Ramirez. Hoffman/TIBS/Ramirez Exh. 3, 188 BR 102.

111. As described in an internal ACCLP memorandum in May, 1986, the "transmittal" process was adjusted somewhat at that time to provide that all station payables would be held and "aged" at the station, and then sent up to Astroline Company for payment only when payment was due and "quick action" was required. SBH Exh. 104.

112. The record indicates that Boling himself was involved

^{36/} (...continued)

followed, notwithstanding the fact that ACCLP had a fully functional office in Hartford, at least from the beginning of 1985, and, thereafter, had a sophisticated computer system specifically designed to accomplish automatically the functions performed by Astroline Company. . . .

SBH Exh. 31, p. 13. Hoffman also asserted that

Significantly (and remarkably), Boling rejected Ramirez's repeated requests that [ACCLP] be allowed to maintain its checkbook in its own office in Hartford.

SBH Exh. 31, pp. 12-13 (emphasis in original).

in reviewing the ACCLP "transmittals" and related invoices in the Astroline Company offices, and that payments of "transmittalized" invoices were not automatically generated and returned to Ramirez in Hartford. For example, SBH Exh. 106 consists of a June 29, 1988 memo from Ramirez to Boling accompanied by several transmittals. According to Ramirez memo, "[a]ll items I will deatail [sic] are beyond critical stages" (emphasis in original). The items listed include "Xmittal 412 total". But at least part of that particular transmittal Number 412 was not paid, as it reappeared in a July 21, 1988 letter from Ramirez to Boling providing a "summary of transmittal items necessary for your attention". SBH Exh. 110. Similarly, the July 21, 1988 memo included a line item from "Transmittal # 366B (quite old)" -- the actual transmittal bearing that number was dated February 22, 1988, meaning that the items on that particular Transmittal No. 366B had been deemed by Ramirez as ready for "quick action", i.e., payment, five months earlier. See also SBH Exh. 111, which consists of a note faxed by Ramirez to Boling seeking payment, in August, 1988, of charges incurred during the previous professional hockey season.

113. Ramirez's June 29, 1988 memo to Boling (SBH Exh. 106) is annotated with an "OK FJB", reflecting Boling's initials. Ramirez's July 21, 1988 memo to Boling (SBH Exh. 110) bears separate "OK" notations next to most, but not all, of the individual itemizations. These initials were intended to indicate to employees in the Astroline Company offices in Boston that funds could be advanced to cover the checks.

Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 102; Tr. 283 (Ramirez testifies, "that's Fred's approval to his accounting department to release the funding").

114. The internal bookkeeping process (pursuant to which ACCLP's checkbook was kept in Boston at the Astroline Company offices) was maintained because it was the preference of Astroline Company and Boling. Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 101; SBH Exh. 30, p. 16; Tr. 278 (Ramirez testifies that the maintenance of the checkbook in Boston "was an accommodation I made to Boling and Sostek and their partners"); 390 (despite Ramirez's preference to maintain checkbook in Hartford, limited partners "were resistant to that" and Ramirez "elected to accommodate them on that"); 416 (Ramirez "accommodated the[] preferences" of Astroline Company).

115. In addition to the involvement of Astroline Company in the routine payment of ACCLP's bills, Ramirez regularly consulted with Boling and Sostek on virtually all aspects of the station's operations. According to Ramirez, he spoke with either Boling and/or Sostek at least once every other week, and probably more often, and in some instances several times a day. Tr. 298-99.

116. Ramirez was expected to provide detailed, routine financial reports to Boling and Sostek, and felt the need in February, 1986 to offer excuses when he failed to do so. SBH Exh. 100. Ramirez provided Boling and Sostek with budget and performance goals. SBH Exh. 108 and 109.

117. Ramirez provided Sostek and Boling with copies of a proposal for a financing arrangement with Advest Credit

Corporation, and notified Boling in September, 1985 that Advest had cancelled its commitment because Advest had not received the required fee. SBH Exhs. 112 and 113.

118. Ramirez provided Sostek with information about Mintz & Hoke, a public relations firm which ACCLP was contemplating hiring. SBH Exh. 114. Ultimately, that firm was hired. Hoffman/TIBS/Ramirez Exh. 6, p. 51.

119. Ramirez provided Boling with multiple reports concerning the station's audience and cable penetration. SBH Exhs. 115, 127 and 128.

120. Ramirez consulted with Boling and Sostek about the possibility of making a bid for the broadcast rights to Red Sox baseball games. SBH Exh. 116. Ramirez also kept Boling and Sostek apprised of his contacts with representatives of the Hartford Whalers hockey team (whose games were carried on Station WHCT-TV). SBH Exh. 126.

121. With respect to programming generally, Ramirez reported to Boling and Sostek about programming options for the station, and Ramirez offered them recommendations. For example, he "strongly recommend[ed]" that the station "go after summer baseball". SBH Exh. 130. Similarly, he suggested that ACCLP tender a bid for "Who's the Boss", SBH Exh. 133, and "The Cosby Show", Tr. 294-98. While Ramirez asserted that the decision as to whether or not to bid for any such programming was his alone, Tr. 297, he also acknowledged that he could not make any bid without a commitment from Boling and Sostek for funding to back the bid. Tr. 295 ("I'm totally dependent on these gentlemen for

funding").

122. In this last regard, he testified that, while he had wanted to bid on "The Cosby Show", Boling and Sostek had not wanted to do so; Ramirez nevertheless bid on that show, although the bid was unsuccessful. Tr. 297. In his testimony, Ramirez seemed to suggest that the fact that he bid on the show demonstrated his independent ability to act regardless of the preferences of Boling and Sostek. Id. However, Ramirez's testimony demonstrates the contrary. In structuring his bid for "The Cosby Show", Ramirez was forced to take into account the stated unwillingness of Boling and Sostek to finance the bid; as a result, Ramirez was unable to tender a bid which was competitive, and ACCLP did not obtain "The Cosby Show". Id. Thus, while Ramirez's decision to make any bid at all for that show may have been a unilateral decision, the fact is that the input he had already solicited and received from Boling and Sostek substantially influenced that decision and ultimately proved dispositive of the matter.

123. Ramirez reported to both Boling and Sostek about the status of renovation of the station's studio site. SBH Exhs. 119 and 120. In that report Ramirez noted two unexpected projects, one involving the need for new windows, the other involving the need for substantial roof work. According to Ramirez's note:

If it becomes necessary to choose one project over the other (you Herb have given the go ahead for the windows) I strongly suggest doing the roof in its entirety and only cosmetics on the windows.

Id. Ramirez claimed that this did not reflect any effort by him

to obtain the approval of either Boling or Sostek. Tr. 271.

Notwithstanding that claim, however, Ramirez elaborated:

My intentions were to confirm from the limited partners their willingness to invest the additional funding. Since I was completely dependent upon their continued investment, . . . , it was not a prudent thing to assume that they would keep sending money. . . .

Tr. 272. In effect, then, Ramirez was seeking approval of the building plans from Boling and/or Sostek.

124. Ramirez involved both Boling and Sostek in his efforts to secure advertising support for the broadcast of Hartford Whaler hockey on the station. SBH Exhs. 122 and 132.

125. Ramirez consulted with Boling concerning campaign contributions for up-coming elections, with Ramirez advancing certain recommendations. SBH Exh. 123.

126. Ramirez kept Boling and Sostek apprised of Ramirez's discussions with various program suppliers concerning the possibility of restructuring payment plans. SBH Exhs. 124, 125 and 129; Tr. 298.

127. The foregoing establishes that Ramirez was acting not as a general partner in "complete control" of the partnership's activities, but rather as the general manager of a broadcast station forced to operate within parameters established and enforced by the station's owners. He "advised" Boling and Sostek about programming matters, he made "recommendations" and suggestions, and he was, of course, "deferential to these gentlemen who were going to be putting up a lot of money". E.g., Tr. 270, 293.

128. Even the extensive, late-submitted documents offered

jointly by Hoffman, TIBS and Ramirez support such a finding.

129. For example, the Hoffman/TIBS/Ramirez exhibits include no fewer than 22 separate documents executed by Ramirez not as "general managing partner", but rather merely as "general manager". See Hoffman/TIBS/Ramirez Exh. 6, pp. 84, 88, 89, 124-25, 126, 143, 218, 219, 228, 242, 248, 250, 252, 256, 260, 262, 269, 291, 293, 332, 334, 347. These include letters spanning the majority of the period during which ACCLP was the licensee of Station WHCT-TV. E.g., Hoffman/TIBS/Ramirez Exh. 6, p. 143 (letter dated April 1, 1985); p. 252 (letter dated July 15, 1987). They include letters to the Commission (Hoffman/TIBS/Ramirez Exh. 6, p. 330), to other government officials (Hoffman/TIBS/Ramirez Exh. 6, p. 262), to publications (Hoffman/TIBS/Ramirez Exh. 6, pp. 291, 293), to viewers (Hoffman/TIBS/Ramirez Exh. 6, p. 334), to contractors (Hoffman/TIBS/Ramirez Exh. 6, pp. 84, 347), to program suppliers (Hoffman/TIBS/Ramirez Exh. 6, pp. 143, 218, 219, 228, 242, 248, 250), and to trade associations (Hoffman/TIBS/Ramirez Exh. 6, pp. 256, 332).

130. While the Hoffman/TIBS/Ramirez Exhibits do include a relatively small number of documents executed by Ramirez as "managing general partner", the majority of those documents appear to be largely similar letters, all generated within a single eight-day period in January, 1987, and all involving efforts to defer payments due on programming obligations. See Hoffman/TIBS/Ramirez Exh. 6, pp. 106 (letter dated 1/21/87); 122 (letter dated 1/21/87); 123 (letter dated 1/13/87); 144 (letter

dated 1/21/87); 145 (letter dated 1/13/87); 216 (letter dated 1/13/86); 226 (letter dated 1/21/87); 227 (letter dated 1/21/87); 238 (letter dated 1/13/87); 245 (letter dated 1/13/87); 251 (letter dated 1/13/87). ^{37/} Thus, the documents introduced into evidence by Ramirez (and Hoffman and TIBS) tend to establish, at most, that Ramirez may have chosen to identify himself as "managing general partner" during a limited time frame in correspondence addressed to a narrow issue, but that Ramirez far more often described himself as simply the station's "general manager".

131. While the various letters signed by Ramirez as "managing general partner" do not include any indication that copies of those letters were sent to Boling, Sostek or others at Astroline Company, the lack of such indication is not reliable proof of the non-involvement of those other persons in the matters underlying Ramirez's correspondence. For example, on January 13, 1987, Ramirez (signing as "managing general partner") wrote to an executive at Paramount Television to propose a deferred payment schedule. Hoffman/TIBS/Ramirez Exh. 6, p. 216. Two days later, Ramirez received a call from Paramount requesting additional information, which Ramirez provided by letter dated January 15, 1987; that letter was signed by Ramirez as "general

^{37/} Three of the listed documents are technically dated January 13, 1986. Hoffman/TIBS/Ramirez Exh. 6, pp. 216, 238, 245. However, the texts of these three letters closely track the texts of the other letters listed in the text above, all of which bear January, 1987 dates. Moreover, the substance of these three letters relates to 1987, rather than 1986. It appears, then, that the 1986 dates were errors not untypical of January, i.e., shortly after the arrival of the new year.

manager". Hoffman/TIBS/Ramirez Exh. 6, p. 217. A month later, on February 17, 1987, Ramirez wrote another letter to Paramount proposing an alternate deferred payment schedule; he signed that letter as "general manager". Hoffman/TIBS/Ramirez Exh. 6, p. 218.

132. None of those three letters reflects, on its face, any involvement by Boling, Sostek or other Astroline Company officials. However, on February 26, 1987, Ramirez wrote again to the Paramount official to offer an alternate payment plan based on a conversation he had had with the Paramount official on February 23, which conversation involved the payment plan set out in Ramirez's February 17, 1987 letter. SBH Exh. 124. But this February 26, 1987 letter shows a "bcc" copy to Sostek. That is, while the materials proffered by Ramirez (and Hoffman and TIBS) may themselves not show any involvement in the underlying matters by Boling, Sostek or others, those materials may not tell the whole story. ^{38/} At least in connection with Ramirez's efforts to renegotiate the Paramount payment schedule, the documentary evidence establishes that at least Sostek was involved.

^{38/} This is further demonstrated by the Hoffman/TIBS/Ramirez Exhibits themselves. Hoffman/TIBS/Ramirez Exh. 6, pp. 267-68, consists of a letter from Ramirez to Commissioner Edythe J. Gaines of the Department of Public Utility Control. Below Ramirez's signature line on that letter there is a "cc" notation, indicating that a copy of that letter was sent to Patricia Shea, Case Coordinator. But Hoffman/TIBS/Ramirez Exh. 6, pp. 262-63, consists of the same letter, except that below the "cc" notation there is a further "bcc" notation, indicating that blind carbon copies were sent to five other individuals. In other words, the mere fact that a particular document does not show, on its face, that a copy was sent to a particular individual cannot be deemed conclusive proof that no such copy was in fact sent.

133. Since the initial correspondence from Ramirez to Paramount (Hoffman/TIBS/Ramirez Exh. 6, p. 216) was sent at precisely the same time as a number of other similar letters to other program suppliers (see Hoffman/TIBS/Ramirez Exh. 6, pp. 106 (letter dated 1/21/87); 122 (letter dated 1/21/87); 123 (letter dated 1/13/87); 144 (letter dated 1/21/87); 145 (letter dated 1/13/87); 226 (letter dated 1/21/87); 227 (letter dated 1/21/87); 238 (letter dated 1/13/87); 245 (letter dated 1/13/87); 251 (letter dated 1/13/87), and since there is no evidence that Paramount was to be treated differently with regard to renegotiation of payment schedules, it cannot be assumed that Sostek, Boling or other Astroline Company officials were not involved in those other matters as well. ^{39/}

134. A variation on this aspect of the Hoffman/TIBS/Ramirez Exhibits occurs with respect to a letter sent by Ramirez to D. Thomas Miller on June 8, 1987. Hoffman/TIBS/Ramirez Exh. 6, p. 361. As with the Paramount letters introduced by Ramirez (and Hoffman and TIBS) and discussed above, this letter to Mr. Miller makes no reference to Boling or Sostek, and was presumably proffered as proof of Ramirez's independence in addressing the matters set forth in that letter. But the text of that letter is identical to letters sent by Ramirez to Sostek and Boling on the same day, see SBH Exhs. 130, 131. So, again, the mere lack of reference to either Boling or Sostek in any given document does

^{39/} Indeed, Ramirez himself testified that he had involved Boling and/or Sostek in discussions relative to "the MCA package", "Who's the Boss", "the Warner Brothers deal" and "Cosby". Tr. 298.

not establish that Boling and/or Sostek were not involved in the matters underlying such document.

135. The Hoffman/TIBS/Ramirez Exhibits also undermine other aspects of Ramirez's claims of complete control of ACCLP. For example, Ramirez asserted that he was solely responsible for employment matters at the station. Tr. 273. But Hoffman/TIBS/Ramirez Exh. 6, p. 3, consists of a letter from Stanford N. Goldman, Jr. ("Goldman"), an attorney in Hartford, to Bacon. According to the letter, Goldman had prepared letters of intent regarding employment of certain station personnel, and Goldman was providing copies of those draft letters to Bacon for his "comments". But Bacon indicated that his role involved watching out for Astroline Company, Tr. 511. Further, according to Ramirez, ACCLP employment agreements were the responsibility of Schatz & Schatz, Tr. 302. In light of these circumstances, Goldman would have had no need to seek out Bacon's "comments" on draft employment agreements -- except to assure that Astroline Company was aware of and agreeable to those agreements. While Ramirez testified broadly that he alone was responsible for employment matters at the station, Goldman's letter belies that claim.

136. There are still more indications in the record that Ramirez did not view himself, and was not viewed by other ACCLP principals, as wielding "complete control" of ACCLP. As previously noted, the partners of Astroline Company (including Boling and Sostek) were signatories on ACCLP's checking account. Additionally, the record reflects that, in May, 1986, ACCLP

submitted to the State Street Bank & Trust Co. in Boston an "Authority for Deposit and Borrowing" in the name of ACCLP. SBH Exhs. 102 and 103. That document was a pre-printed form onto which certain additional information specific to ACCLP had been typed. That additional information included a listing of all the general partners of ACCLP. As typed in, that list included only Sostek, Boling and two other principals of Astroline Company; Ramirez's name does not appear on the form -- as a general partner or in any other capacity -- as that form was executed and submitted to the bank. Although given an opportunity to explain this document, and particularly why he was not included in the listing of ACCLP's general partners, Ramirez -- the supposedly sole controlling general partner of ACCLP -- was unable to do so. Tr. 291-92.

137. Similarly, in January, 1987, ACCLP prepared -- and Ramirez signed -- a "Commercial Deposit Account Resolutions and Authorities for Opening and Maintaining Deposit Account(s)" at the Bank of Boston. SBH Exh. 105. The only two signatories listed for the account in question were Sostek and Boling. Hart was provided a copy of that document for his signature, and he appears not to have expressed any concern about the fact that only Sostek and Boling were to be signatories. SBH Exh. 107 (in response to a letter requesting his signature on the form, Hart merely wrote "thank you" on the bottom of that letter). Again, Ramirez was given an opportunity to explain his signature on this document and, again, he provided no explanation. Tr. 289-91.

138. The involvement of Boling and Sostek with ACCLP's

affairs was not limited to their repeated contacts with Ramirez. Detailed bills from B&H indicate that they conferred with Hart with respect to regulatory matters, e.g., SBH Exh. 93, p. 2, and 95, p. 2. In 1986, when Sostek learned that a special temporary authorization issued to the station had been allowed to expire, Sostek wrote directly to Hart to complain. SBH Exh. 117. Hart responded with a letter of explanation to Sostek, in which he advised Sostek that Hart wanted to discuss a variety of ACCLP-related matters with Sostek and Boling in greater detail. SBH Exh. 118.

139. Documents also indicate that Boling's relationship with Hart and B&H was such that Boling was able to prevent B&H from undertaking projects on behalf of ACCLP, or even from responding to inquiries from Ramirez. SBH Exhs. 134 and 135. SBH Exh. 135 is a memorandum from David Dudley ("Dudley") (a B&H associate under Hart) to Hart. According to that memo, Hart informed Dudley that

Fred Boling has requested that we perform no additional services unless he specifically authorizes the same and that I "not respond" to any further telephone calls from either John [Jordan, a WHCT-TV employee] or Rich Ramirez. . .

That memo is dated August 2, 1988. On August 8, 1988, Hart wrote to Boling requesting clearance to work on a project for which the total charge was expected, by Hart, to be less than \$300. In that letter Hart wrote

It is not a lengthy project; but in light of our recent conversation, I did not want to commence work prior to informing you. If I do not hear from you before Wednesday, August 10th, I will assume that the assignment was authorized by you.

SBH Exh. 134.

140. These two documents, dated within a week of one another, establish that Boling did advise Hart that no work was to be undertaken without Boling's prior authorization, and further that Hart apparently respected that instruction sufficiently to (a) advise Dudley of it and (b) seek Boling's authorization to undertake a \$300 project. ^{40/}

IX. ACCLP's August 3, 1987 Letter "in lieu of" Ownership Report

141. Despite the fact that numerous changes in ACCLP's partnership agreement and its membership had occurred since October 31, 1985 (i.e., the date of ACCLP's last supplemental Ownership Report, SBH Exh. 20), ACCLP did not file any reports concerning those changes between October 31, 1985 and August 3, 1987. However, on August 3, 1987, ACCLP was required, by the Commission, to submit a full and complete Ownership Report. SBH Exh. 74, p. 2. Although ACCLP was fully aware of that requirement, ACCLP elected not to file such a Report, and instead filed a letter, over Hart's signature, "in lieu of filing its official Annual Ownership Report." SBH Exh. 21. The evidence concerning the preparation and submission of Hart's August 3, 1987 letter is as follows.

^{40/} In his testimony, Hart did not deny giving Dudley instructions concerning contacts with station personnel -- Hart attempted to sidestep the adverse implications of Dudley's memo by claiming that Dudley must have misunderstood whatever Hart had told him. Tr. 635-37. But the contemporaneous letter from Hart to Boling (SBH Exh. 134) strongly supports a finding that Dudley did not misunderstand Hart at all, and that Hart's 1998 testimony is simply an attempt to re-write history.

142. In 1984, the Commission had adopted a requirement that broadcast licensees submit annual Ownership Reports on the anniversary of the filing of their renewal applications. Ownership Attribution, supra. That annual reporting obligation had been suspended pending further consideration of matters relating to the Commission's ownership rules and clearance of the revised ownership report form by the Office of Management and Budget. SBH Exh. 74, p. 2. ^{41/} On March 11, 1987, however, the Commission issued a Public Notice advising all broadcast licensees that they would be required to submit an Ownership Report (FCC Form 323) on August 3, 1987. Id.

143. Whitley (a B&H attorney) sent a memorandum to all B&H broadcast clients, including ACCLP, advising them of the March 11, 1987 Public Notice and providing a copy of (a) that notice and (b) the revised Ownership Report form which would have to be completed. SBH Exh. 74; Tr. 337-38. The form sent out by Whitley included the instructions, issued by the Commission, for completing the form. Those instructions included the following:

Any contract or modification of contract relating to the ownership, control, or management of the licensee or permittee or to its stock must be filed with the Commission, as required by Section 73.3613 of the Rules.

SBH Exh. 74, p. 3.

144. As discussed above (see ¶¶ 27-29), the Commission had,

^{41/} While the then-newly adopted annual ownership reporting obligation had been temporarily suspended, there is no evidence that the Commission's other rules requiring reporting of changes in ownership or underlying organizational documents within 30 days of those changes, see, e.g., 47 C.F.R. §73.3613, was ever suspended.

in 1985, announced specific guidelines relative to limited partnerships, including restrictions against the involvement of limited partners in the management and operation of the licensee's media-related activities. As a result, the new Ownership Report form included, with respect to limited partnerships, a required certification as set out in Instruction 4 of the form's instructions. The certification required that the responding limited partnership state whether or not its limited partners were in fact insulated from the partnership's media activities. According to Instruction 4,

sufficient insulation of a limited partner for purposes of this certification would be assured if the limited partnership agreement: . . . restricts any exempt limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business; . . . bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities . . . ; and . . . states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.

SBH Exh. 74, p. 3. Again, a copy of these instructions was provided to ACCLP as early as March, 1987, some five months before the report was required to be filed. SBH Exh. 74.

145. Ramirez received the Whitley memo, Tr. 337-38, and on May 5, 1987 he himself sent a reminder to Hart concerning the need to complete an annual Ownership Report for filing by August 3, 1987. SBH Exh. 75. Hart forwarded Ramirez's reminder note to Harburg, who was an "expert" relative to the preparation of Ownership Report forms. Tr. 554, 620. On the bottom of Ramirez's letter, Hart hand-wrote a note to Harburg asking "are

we ready to begin the Annual Ownership Report for WHCT-TV"? Id.

146. On July 7, 1987, Hart sent letters to the various ACCLP partners seeking information necessary to respond to the Ownership Report form. Responses to Hart's letter were to be sent to Harburg. SBH Exhs. 76, 77, 78, 79 and 80.

147. Harburg prepared a draft Ownership Report and provided it to Ramirez for his review. Ramirez signed and dated that Report on July 20, 1987. SBH Exh. 82. According to Ramirez, when he signed a document, that indicated that he was satisfied that the document was accurate. Tr. 304. However, the July 20, 1987 draft Report bears multiple hand-written corrections. In particular, the certification concerning insulation of limited partners originally included a typed-in response of "no", meaning that ACCLP was not properly insulated as required by Commission policies. Immediately beneath that "no" answer had been typed in the following:

Ownership information pertaining to Limited Partner, Astroline Company, is provided since Astroline Company is also a shareholder of General Partner, WHCT Management, Inc.

SBH Exh. 82, p. 1. However, on the draft as it appears in the record, the typed-in "no" response was crossed-out by hand and an "X" was marked by hand in the "yes" box; also, the typed-in verbiage quoted above was crossed-out by hand.

148. Paragraph 6 of the Ownership Report required a listing of all contracts required to be filed by Section 73.3613 of the Commission's rules. The only legible hand-written response included in that paragraph on the July 20, 1987 draft was a

reference to the September 10, 1985 amendment to the ACCLP limited partnership agreement. See ¶64, above. No reference at all was made to the December 31, 1985 Amended Partnership Agreement.

149. Harburg prepared other versions of the ACCLP Ownership Report. One partial version obtained from the files of B&H reflects a typed-in "yes" response to the insulation certification, but with Harburg's hand-written notation "type in See Exhibit 1". SBH Exh. 82, p. 3. Paragraph 6 of this particular version -- the paragraph requiring a list of contracts -- included two typed-in entries, the first referring to the original May, 1984 ACCLP partnership agreement, the second referring to the September 10, 1985 amendment to that agreement. Again, no reference was made in this version to the December 31, 1985 Amended Partnership Agreement.

150. SBH Exh. 83 consists of hand-written notes of Harburg and Dudley. The first page is a single page of notes which Harburg identified as being in her hand-writing. SBH Exh. 139, pp. 23-24. Those notes include the question "is there an amended l.p.a. for ACC Ltd. Partners?" SBH Exh. 83, p. 1. The remaining three pages of this exhibit consist of a hand-written memo from Dudley to Harburg, dated July 24, 1987. According to that memo, Dudley had been given a copy of a draft ACCLP Ownership Report by Hart, and he had reviewed it. He stated, inter alia, that

In reviewing the Report, I have also noticed that no 73.3613 contracts have been listed. Presumably Astroline Limited Partnership has such contracts (ex. articles of partnership, amendments to such articles, network affiliation agreements, etc.). Presumably

these should be listed.

. . .

Finally, can Astroline Company validly issue the certification of non-involvement in view of the substantial number of interlocking officers and directors with WHCT Management and the fact that it owns 100% of the stock of WHCT Management? You might also note that the certification as drafted is nonsensical. Astroline Company has indicated that it will not be involved in its own media activities.

SBH Exh. 83, pp. 2-3.

151. On July 28, 1987, Bacon sent to Harburg, in care of Hart, a copy of the December 31, 1985 Amended Partnership Agreement. SBH Exh. 85. No witness could recall exactly why Bacon sent this document to Harburg in late July, 1987, or why he sent it to her in care of Hart. Tr. 497-98; 596.

152. On July 29, 1987, Harburg sent to Ramirez a revised Ownership Report for his review and signature. SBH Exh. 86. That version of the Ownership Report included a "yes" response to the insulation certification, indicating that ACCLP would be certifying that its limited partners were appropriately insulated from the partnership's media activities, as required by the Commission; that certification, however, also included the additional typed-in notation "See Exhibit 1". Exhibit 1 to that version read as follows:

Astroline Communications Company, Ltd. Partners [sic] certifies that no limited partner other than Astroline Company will be actively involved in the media activities of Astroline Communications Company, Ltd. Partners [sic]. Ownership information pertaining to Limited Partner, Astroline Company is provided since Astroline Company is also a shareholder of WHCT Management, Inc., which is one of the general partners of Astroline Communications Company, Ltd. Partners.

SBH Exh. 86, p. 4.

153. In 1987, August 3 -- the deadline for filing the Ownership Report -- fell on a Monday. On July 31, 1987, the Friday immediately before the deadline, Harburg faxed to Bacon yet another version of the draft Ownership Report. SBH Exhs. 87-89. She also provided a copy of that draft to Hart. Id.

154. In this July 31 draft, the response to the insulation certification had reverted to "no", and Exhibit 1 as it had appeared in the July 29 draft had been deleted. The response to Paragraph 6 (which required a listing of agreements) included only the original May, 1984 partnership agreement, the September 10, 1985 amendment to that agreement, and the separate agreements pursuant to which Planell and Webb had acquired their respective interests and the April, 1987 agreement pursuant to which Hart had relinquished his interest. In other words, the list included items both pre-dating and post-dating the December 31, 1985 Amended Partnership Agreement

155. Hart returned his copy of the draft to Harburg, adding the following hand-written notation on the cover page (which was the "Telecopier Cover Letter" showing that the document was to be faxed by Harburg to Bacon):

Dale,

Here are my comments. Let [sic] have a conf call w/
Carter & Rich on Monday AM.

SBH Exh. 87. Hart's handwritten comments relate virtually exclusively to certain address corrections. He made no correction concerning the "no" certification relative to limited

partnership insulation, and he made no correction concerning the listing of agreements, even though that listing did not include any reference to the December 31, 1985 Amended Partnership Agreement, a copy of which had just been sent to Harburg (in care of Hart) by Bacon three days earlier.

156. Harburg retained a copy of her fax to Bacon, and notated it following a conversation she had with Bacon concerning her draft. Her notation, which appears on the cover page of her copy (SBH Exh. 88), reads:

Carter

He votes not to file because of the implications

157. Bacon's copy of the fax, obtained from the files of P&B, corroborates that notation. On the bottom of Bacon's copy of the fax he received from Harburg, he wrote:

Reviewed by CSB 7/31/87/tc Dale H. 7/31/87

Expressed concern re including ownership rep'ts for WHCT Mgmt & Astro Co because they might be deemed admissions that those entities exercise control of ACC. [other notations illegible]

SBH Exh. 89; Tr. 493-494.

158. On July 31, 1987, Ramirez signed another version of the ACCLP Ownership Report. SBH Exh. 91. The ACCLP portion of this version of the report corresponded to the version which was faxed to Bacon on July 31, i.e., the limited partnership certification relative to ACCLP was answered "no" (with no additional explanatory exhibit) and the listing of the agreements in Paragraph 6 did not include reference to the December 31, 1985 Amended Partnership Agreement. Ramirez had "no idea whatsoever" why no such reference was included. Tr. 346.

159. The July 31, 1987 version which Ramirez signed did differ, however, in the portion of the Report relating to Astroline Company. In a portion titled "Exhibit 2 Ownership of Astroline Company", the limited partnership insulation certification was answered "no", but the notation "See Exhibit 4" was typed in. The next-to-last page of this draft consisted of a title ("Exhibit 3 Certification"), one sentence of typed verbiage ("Astroline Company certifies that no limited partner will be actively involved in the media activities of Astroline Company"), and a signature line bearing the signature of Boling.

160. In addition, there were a number of hand-written notations in Harburg's writing (SBH Exh. 139, p. 43), including "Change 3 → 4 w/white-out" and "type in date here opposite Boling's signature w/the date July 20, 1987".

161. The last page of the version which Ramirez signed on July 31, 1987 consists of a title ("Exhibit 4 Certification"), one sentence of typed verbiage ("Astroline Company certifies that no limited partner who is not also a general partner will be actively involved in the media activies [sic] of Astroline Company"), a signature line bearing Sostek's signature, and the date of 7/29/87.

162. ACCLP had known since at least March, 1987 that an Ownership Report would have to be filed on August 3, 1987. B&H attorneys with particular expertise in Ownership Reports had been working on that Report for at least a month before the August 3, 1987 deadline. Multiple drafts of the Report had been prepared, and Ramirez had executed at least two such drafts, including one

dated July 31, 1987.

163. And yet no Ownership Report was filed with the Commission.

164. Instead, on August 3, ACCLP, through Hart, filed a letter "in lieu of filing its official Annual Ownership Report". SBH Exh. 21. According to that letter,

[ACCLP] is currently in the process of resolving a number of matters that have arisen as a result of the recent Court of Appeals Order in Shurberg v. FCC, No. 84-1600 (D.C. Cir., June 25 1987) (remanding case to FCC); the death of Joel A. Gibbs, one of the Limited Partners of Astroline Company; and an internal reorganization. A complete Ownership Report will be filed as soon as possible.

Id. The August 3, 1987 letter provided listings of the principals of ACCLP, WHCT Management, Inc. and Astroline Company, along with summary descriptions of the nature and extent of the interest each principal supposedly held in each entity. The August 3, 1987 letter did not include any certification concerning the insulation of ACCLP's limited partners, nor did it contain any listing of agreements required to be filed pursuant to Section 73.3613 of the Commission's rules, nor did it contain any copies of such agreements.

165. The June 25, 1987 Order of the Court of Appeals referenced in Hart's August 3, 1987 letter appears in the record as SBH Exh. 90. By its own terms that Order does not relate in any perceptible way to ACCLP's ownership, and Hart was unable to explain why the issuance of that Order could have prevented or delayed the submission of an Ownership Report on August 3, 1987. Tr. 625-26. Similarly, he was unable to explain why the death of

Mr. Gibbs -- which had occurred in May, 1986, more than a year earlier, Tr. 615 -- could have prevented or delayed the submission of an Ownership Report on August 3, 1987. Tr. 608-09. And Hart conceded that, contrary to his August 3, 1987 letter to the Commission, no "internal reorganization" in fact took place; at most, some discussions about possible reorganizations may have occurred, but none came to fruition. Tr. 627-29. Although given multiple opportunities, Hart failed to explain why ACCLP was supposedly unable or unwilling to file a full Ownership Report on August 31, 1987 when (a) Harburg, one of B&H's "experts" in such matters, had already drafted such a full report, and (b) Ramirez had executed such a full Report, and (c) neither Ramirez, nor Harburg, nor anyone else (as far as the record shows) had ever suggested that any of the three factors listed in Hart's August 3, 1987 letter prevented or interfered in any way with the preparation and submission of a full report. Tr. 617-24.

166. The decision to file the August 3, 1987 letter, rather than a complete Ownership Report, was made by Hart, Ramirez and Bacon. Tr. 349-53; 620. None of them offered any comprehensible and/or credible explanation as to why an Ownership Report (as opposed to the Hart letter) was not filed. Id.; 495-96. Hart did acknowledge that ACCLP knew that SBH would be interested in whatever ACCLP might file with the Commission, and even suggested that it was SBH's job (rather than ACCLP's) to assure that ACCLP complied with the Commission's reporting requirements. Tr. 616. In this same context Ramirez as well acknowledged that ACCLP was

"always aware of the constant scrutiny" that SBH was "putting upon" ACCLP "regarding the structure of our company". Tr. 352. Bacon demonstrated a similar awareness of and sensitivity to the pendency of the Shurberg Broadcasting litigation and the matters at issue in that litigation. ^{42/}

X. Developments Concerning ACCLP's Structure and Ownership -- 9/87-6/90

167. No further ownership changes appear to have occurred between August 3, 1987 and October, 1988. The documentary evidence demonstrates, though, that in the late summer of 1988, ACCLP and its counsel contemplated changes of ACCLP's ownership structure in order to bring it into compliance with the Commission's rules and policies relative to the insulation of limited partners from the operations of the partnership's media activities.

168. The documents in question begin with an August 31, 1988 letter from Bacon to Hart, transmitting to Hart a copy of the December 31, 1985 Amended Partnership Agreement. SBH Exh. 92.

^{42/} See Tr. 503-04:

Bacon: . . . the role of [Ramirez] as a control person, the controlling person of the entity, was already in litigation . . . and has been in continuous litigation ever since, as far as I can tell.

. . . .

Q: When you say that the question of Mr. Ramirez's control was in constant litigation, are you referring to the Shurberg litigation?

Bacon: Yes, I am.

Q: Do you recall when the Shurberg litigation started?

Bacon: I don't recall a time when it wasn't going on.

It is not clear why Bacon chose to send that document to Hart at that particular time, or why Hart did not already have access to a copy of the December 31, 1985 Amended Partnership Agreement from his own files (since he was a signatory to that agreement) or from the files of B&H. Tr. 501-02; 638-39.

169. On September 7, 1988 -- one week after Bacon's letter transmitting the December 31, 1985 Amended Partnership Agreement to him -- Hart sent a letter to Ramirez. SBH Exh. 96. In his letter Hart indicated that Ramirez and Hart had discussed the preparation of an Ownership Report for ACCLP, but that there were "certain matters which must be addressed" before they could do so. Id. According to Hart,

Recent Commission precedent has established specific "preferred" language which the Commission recognizes as evidence of the insulation of limited partners from the management or operation of the media-related activities of the partnership. It is imperative that we amend the partnership agreement so that it accords with recent case law.

Id. Copies of Hart's letter were sent to Boling and Bacon. In his letter Hart did not specify what "recent Commission precedent" he was referring to. Hart did testify, however, that he had followed the development of the Commission's policies toward treatment of limited partnerships from 1984 on and was familiar with those policies. Tr. 583-84. As discussed above, the requirement that limited partners be insulated from a licensee's media-related activities had been imposed in June, 1985, see ¶¶27-29, supra; had been reaffirmed in various contexts since then, see ¶¶30-32, supra; had been specifically included in the Instructions to the Ownership Report form which B&H had sent

to ACCLP in March, 1987, see ¶144, supra; and had apparently been considered in the aborted preparations of an Annual Ownership Report for ACCLP in July, 1987, see ¶¶149-161, supra.

170. The following day -- September 8, 1988 -- Linda R. Bocchi ("Bocchi") (another B&H attorney working under Hart, Tr. 302-03) sent a letter to Ramirez transmitting to him a draft application (FCC Form 316) for consent to the transfer of control of ACCLP. SBH Exh. 97. According to the draft application, the purpose of the application was to reflect that WHCT Management, Inc. was "retiring as general partner and assuming the status of limited partner" and was "assigning its 22% voting interest" to Ramirez. In her cover letter Bocchi stated that "[i]t is imperative that the form be returned as soon as possible". The form itself as obtained during discovery had been executed by Boling (on behalf of WHCT Management, Inc.) on September 12, 1988, and by Ramirez on September 9, 1988. Although executed, this application was not filed with the Commission. The record contains no evidence concerning why the application was not filed.

171. On September 12, 1988 -- four days after Bocchi sent Ramirez the draft Form 316 application and five days after Hart had sent Ramirez his letter stating that "certain matters" needed to be addressed before an Ownership Report could be prepared for ACCLP -- Bocchi wrote a letter to Bacon (with a copy to Hart). SBH Exh. 98. In that letter she transmitted a copy of "the ownership report that we are planning to file" for ACCLP. Id. That draft Ownership Report (which, according to Paragraph 1 of

the form, reflected information accurate as of August 31, 1988), showed Ramirez as the sole general partner and Planell as the sole limited partner. Id. The limited partnership insulation certification question (Paragraph 5) was answered "yes" with no reference to any accompanying exhibit. Id. Nevertheless, a one-page "Certification" was also included which stated as follows:

I, Richard P. Ramirez, General Partner of Astroline Communications Company Limited [sic] ("Astroline"), hereby certify, under penalty of perjury, that the limited partners of Astroline are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership.

Id. The "Certification" was not executed, and it does not appear that the draft Ownership Report was executed or submitted to the Commission.

172. The record contains four additional documents which appear to be three drafts and a final version of a letter, from B&H to ACCLP, concerning the need to assure insulation of its limited partners.

173. The first such document -- SBH Exh. 58 -- is in the form of a memorandum, dated November 10, 1988, from B&H to ACCLP. The memo included no signature and no other identification of its author (although the final sentence of the memo refers questions to Bocchi or Dan Alpert ("Alpert"), another B&H attorney). The memo referenced the fact that ACCLP was required to file a renewal application on December 1, 1988, and noted that the June 25, 1987 Court of Appeals Order (SBH Exh. 90) had specified that ACCLP's renewal application would be subject to comparative consideration without the benefit of any renewal expectancy. The

memo then addressed the Commission's policies concerning insulation of limited partners, stating:

[I]n order to properly prevent limited partners from being able to control or influence the general partners, the FCC now requires that limited partnership agreements contain provisions (1) specifying that an exempt limited partner (or its "constituent parts") cannot become "materially involved" in the management or operations of the media business of the partnership, and cannot act as an employee of the limited partnership if his or her functions relate, directly or indirectly, to the media enterprises of the company; . . . (3) restricting the limited partners from communicating with the licensee or general partner on matters pertaining to the day-to-day operations of its business; . . . (6) barring a limited partner from performing any services to the partnership materially relating to its media activities.

SBH Exh. 58, pp. 1-2 (emphasis in original). The memorandum further advised that:

All of the foregoing is to stress the importance of maintaining a strict separation between limited partners and general partners. General partners should be in complete control of the organization, and limited partners must be passive, non-voting equity holders. No partners should hold dual roles as limited and general partners.

SBH Exh. 58, p. 2 (emphasis in original).

174. SBH Exh. 59 is an unexecuted letter to Ramirez, dated November 14, 1988, over the signature block of Edward Hayes, Jr. ("Hayes"), a B&H partner. According to the initial sentence of this letter, ACCLP was then contemplating a "restructuring of its organization in order to allow for the infusion of additional capital into the organization"; no further information about any such contemplated restructuring was provided in the letter. The letter did not include the detailed recitation of the Commission's restrictions on limited partnerships that had been

included in the November 10, 1988 memo (SBH Exh. 58), but did state that the Commission

insists that in order to avoid attribution, an applicant's or licensee's non-voting equity owners must remain passive, and they must exert no control over a station's day-to-day affairs.

SBH Exh. 59. The letter then asserted self-servingly (and incorrectly ^{43/}) that ACCLP had been in compliance with that policy in the past; however, according to the letter, "recent decisions by the Commission necessitate certain changes in the basic structure" of ACCLP. The letter advised that

[i]n light of the fact that at present WHCT, one of [ACCLP]'s general partners, operates in a similar dual capacity because it is composed of persons who are concurrently limited and general partners, we strongly recommend that WHCT immediately retire as general partner.

SBH Exh. 59.

175. SBH Exh. 60 consists of a copy of SBH Exh. 59 which was marked-up with various hand-written notations. Bacon testified that the notations were added by Lance. Tr. 478-79. Lance's notations included the following:

- deletion of the language concerning ACCLP's supposed contemplated restructuring to allow for the infusion of

^{43/} Most obviously, the wealth of documents created in connection with the aborted preparation of the August 3, 1987 Ownership Report, as well as the correspondence from early September, 1988, conclusively demonstrate that B&H knew that ACCLP was not in compliance with the restrictions on limited partnerships, and had so advised ACCLP. See, e.g., SBH Exhs. 83 (including Dudley's note specifically addressing the insulation question); 87 (Harburg's apparently final draft Ownership Report reflecting a "no" response to Paragraph 5 relating to the limited partner insulation certification); 96 (Hart's September, 1988 letter expressly stating that it was "imperative" to amend the ACCLP partnership agreement to bring it into compliance with the insulation requirements).

capital;

- substitution of "make advisable" for "necessitate" in the sentence: "recent decisions issued by the Commission necessitate certain changes in the basic structure" of ACCLP;
- deletion of the two references to the fact that WHCT Management, Inc. was composed of persons who were concurrently general and limited partners of ACCLP;

SBH Exh. 60. Where the original version of this letter (i.e., SBH Exh. 59) included a suggestion that WHCT Management, Inc. retire as a general partner, Lance suggested that all of the stock of WHCT Management, Inc. might be transferred, although he did not indicate to whom such a transfer might be directed.

176. SBH Exh. 61 reflects the apparent culmination of the drafting process. It is a letter, signed by Hayes, addressed to Ramirez, and dated November 16, 1988. This letter did not include the stark recitation of the Commission's restrictions on limited partnerships, nor did it state with any degree of clarity or precision the undeniable fact plainly acknowledged in the earlier versions, i.e., that ACCLP's structure included partners who were, in effect, both limited and general partners.

Approaching that question gingerly, Hayes' November 16, 1988 letter stated:

[U]nder [ACCLP]'s present ownership structure, a non-voting limited partner is indirectly holding all of the stock in a "voting" corporate General Partner, WHCT Management, even though you [i.e., Ramirez] are clearly the controlling General Partner with an overwhelming majority of the voting power. We recommend that this relationship between [ACCLP]'s Limited Partner and WHCT Management be modified and terminated. . . .

SBH Exh. 61, p. 2. Several paragraphs later, the letter stated more strongly that "we recommend very strongly that" either WHCT

Management, Inc. retire as general partner or that all of its stock be transferred to Ramirez. Id. (emphasis in original).

177. The November 16, 1988 version of the memo/letter (SBH Exh. 61) repeatedly suggested that WHCT Management, Inc. was merely a temporary holder of its general partnership interest in ACCLP, and that that interest was to be transferred to station employees. ^{44/} As of November, 1988, however, ACCLP had been in

^{44/} For example, the letter stated that "WHCT Management has declared that virtually all of the partnership interest it holds in [ACCLP] is held for the benefit of other qualified minority individuals who may become involved in the management of Channel 18 in the future, and that WHCT Management would transfer partnership interests to such individuals when they became employed by the station." SBH Exh. 61, p. 2. For another example, the letter stated that WHCT Management "is holding its General Partner interest largely for the benefit of other minority individuals who may become involved in the management of the station." SBH Exh. 61, p. 3. The basis for these statements is not provided in the letter. The statements concerning the intentions of WHCT Management, Inc. relative to disposition of "virtually all", or even a bare majority, of its interest are directly contradicted by ACCLP's representations to the Commission (transmitted by Hart) in 1984, where ACCLP stated that "WHCT Management is prepared and intends to transfer up to 4% . . . of the nine percent (9%) Interest held by it" to additional minority personnel. See SBH Exh. 15, p. 000533. They are also directly contradicted by the fact that Boling had made very clear (to, inter alia, Hart, a B&H attorney) that any transfers to employees would be subject to reacquisition upon the employee's departure from the company, SBH Exh. 40, p. 2. They are also directly contradicted by the fact that, in May, 1985, with the contemplated transfer of 4% of WHCT Management, Inc.'s interest to Hart and Planell, it was understood that "[t]hose transfers will satisfy any and all obligations of WHCT Management regarding the transfer of Partnership Interests to minorities", SBH Exh. 39, p. 2. The overall reliability of any of ACCLP's claims concerning the possible disposition of ownership interests to employees is also undermined by the fact, in his May 29, 1984 letter to the Presiding Judge, Hart stated that distribution of those supposed interests to employees would be in the form of general partnership interests (see SBH Exh. 14, p. 2 ("these minorities shall be the controlling general partners")); of course, neither Planell, nor Webb, nor O'Brien ever owned any general partnership interests.